**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

Writ Petition No. 1131 of 1991

M/s. Ashima Syntex Ltd. & Ors. .. Petitioners
V/s.
Union of India and Ors. .. Respondents

Mr. K.R. Bulchandani i/b. M/s. Kamal & Co. for the Petitioners
Ms. S.V. Bharucha with Mr. S.M. Shah for the Respondents

**CORAM : DR. S. RADHAKRISHNAN & J.H. BHATIA, JJ.**
**DATED : 20.07.2005.**

**P.C.:-**

1. In the above, the Petitioners had imported 672 cartons of 15,795 Kgs. of Polyester Partially Oriented (POY) yarn 115D/32F quality of Taiwan origin as raw material for their actual use in their factory for their end product at US $ 1.40 per Kg. totalling US $ 22,130 equivalent to Rs. 4,04,787/- at the relevant time. It appears that the import of the said goods was allowed under OGL being listed at Sr. No. 296 in Appendix 6 List 8 Part I, of AM 88-91 Policy.

2. Subsequently, on 26.10.1990, the Petitioners had filed bill of entry, accordingly the same was allowed. Petitioners filed bills of entry for the entire 672 cartons for clearance for home consumption by two lots, i.e. the first lot of 213 cartons on 13.02.1991 and another lot of 459 cartons, on 23.3.1991.

3. It appears that while the Petitioners had allowed

to clear the above goods, as the Respondents allowed them to clear on the basis of their valuation at US $ 1.70 per Kg. worked out to Rs. 4,91,527/-, whereby the duty difference works out to Rs. 1,73,610/-.

4. The Petitioners thereafter filed this Petition challenging the levy of the additional duty. After the enhancement of duty, the Petitioners approached this Court and this Court by an order dated 10.4.1991, allowed the Petitioners to clear the goods by furnishing the bank guarantee in favour of the Collector of Customs to the extent of 25% of the additional duty and I.T.C. bond for the balance of 75% of the additional duty. While passing the said order dated 10.4.1991, this Court, observed as under:-

> "3. Respondents at liberty to issue show cause notice and pass necessary adjudication orders after complying with the rules of natural justice, but such orders not to be enforced for a period of two weeks after service thereof on the petitioners. The petitioners are at liberty to challenge the adjudication order, if so desired."

Shri Bulchandani, the learned counsel appearing on behalf of the Petitioner, Shri Bulchandani states that inspite of this Court specifically directing the Respondents to issue a show cause notice and pass necessary order of adjudication, till date no show cause notice has been issued and no adjudication order has been passed. There is no dispute about that.

5. Shri Bulchandani, the learned counsel for the Petitioners contended that till date, the Respondents have not even pointed out any contemporaneous material to indicate that at the time, the goods which the Petitioners had imported, were valued at a higher price. In that behalf, Shri Bulchandani referred to a recent Supreme Court judgment in **Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai 2000 (122) E.L.T. 321 (S.C.)**, wherein the Supreme Court in paragraph nos. 6, 7, 8, 9, 13 and 14 has clearly observed as under:-

> 6. Under the Act customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the Value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are *ordinarily sold,* or offered for sale, for delivery at the *time* and *place of importation* - in the course of international trade. The word 'ordinarily' necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale.....". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the rules framed in this behalf.
>
> 7. The rules which have been framed are the Customs, Valuation (Determination of Price of Imported Goods) Rules, 1988. The rules came into force on 16th August, 1988. Under Rule 3(i) "the value of imported goods shall be the transaction value". "Transaction value" has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4(1) in turn states:

"The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules."

8. Reading Rule 3(i) and Rule 4(1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2) namely:

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-

(i) are imposed or required by law or by the public authorities in India;

or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3).

9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs authorities are bound to assess the duty on the transaction value.

13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the

> other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under any of these provisions, the value is required to be determined under Rule 8" using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India." If the phrase "the transaction value" used in Rule 4 were not limited to the particular transaction then the other Rules which refer to other transactions and data would become redundant.
>
> 14. It is only when *the* transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules.

Therefore, the contention of the learned counsel for the Petitioners is that unless the Customs Authorities are able to produce any contemporaneous material to indicate that the price was higher, the Customs Authorities will have to accept the price as declared by the Petitioners.

6. The learned counsel for the Respondents very pathetically submit that there is no record available and as such, is unable to assist this Court.

7. There is no dispute that in the above, the Respondents have neither issued show cause notice nor passed order of adjudication. Even affidavit in reply clearly shows that there is no contemporaneous material to indicate any higher price and having regard to the Supreme Court judgment in **Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai (supra)**, the price quoted by the Petitioner in the Bill of Entry will have to be accepted as a correct price, hence Rule is made absolute in terms of prayer clause (a). The Respondents shall discharge and release the bank guarantee within a period of two weeks from today, however, with no order as to costs.

**(DR. S. RADHAKRISHNAN, J.)**

**(J.H. BHATIA, J.)**